

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

DAN GOLUBIEWSKI and STEVEN
CHECCHIA, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

DAVE INC.,

Defendant.

No.: 3:22-CV-02077-MEM

Hon. Malachy E. Mannion

**MOTION FOR LEAVE TO FILE RESPONSE TO
PLAINTIFFS' SUR-REPLY**

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Attorneys for Defendant, DAVE INC.

Defendant Dave Inc. (“Dave”) respectfully files this motion for leave to file a response to the sur-reply (ECF 30) this Court granted Plaintiffs leave to file. ECF 29. Plaintiffs do not oppose this motion.

Sur-replies are appropriate where a “party seeks to respond to an argument raised for the first time by an opposing party.” *Gentry v. Sikorsky Aircraft Corp.*, No. CV 18-1326, 2018 WL 6329147, at *2 (E.D. Pa. Dec. 4, 2018). Those circumstances were not present here when Plaintiffs asked for leave to file a sur-reply. In seeking leave to file the sur-reply, Plaintiffs incorrectly represented that Dave’s reply in support of its motion to compel arbitration raised new arguments.

That was not true. Dave’s reply brief addressed the assertions made in Plaintiffs’ opposition. The reply brief also expounded on arguments made in Dave’s moving papers. But Dave presented no completely new arguments or evidence. Nonetheless, in an effort to have the last word, Plaintiffs mischaracterized the briefing by Dave in its moving and reply papers, wrongly asserting that Dave presented “new” arguments on Reply. Plaintiffs also presented entirely new arguments of their own that do not even directly respond to points made in Dave’s reply.

Accordingly, Dave respectfully requests leave to file the brief attached hereto as **Exhibit 1** to correct the misrepresentations and respond to Plaintiffs’ newly-minted arguments in its sur-reply.

Dated: May 24, 2023

Respectfully submitted,

MYERS BRIER KELLY

/s/ Daniel T. Brier

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CERTIFICATE OF CONCURRENCE/NONCONCURRENCE

I, Daniel T. Brier, hereby certify that I sought the concurrence of counsel for Plaintiff Kevin Abramowicz, Esquire, in this Motion. Mr. Abramowicz concurs in this Motion.

/s/ Daniel T. Brier
Daniel T. Brier

CERTIFICATE OF SERVICE

I, Daniel T. Brier, hereby certify that I served the foregoing Motion for Leave to File Response to Plaintiffs' Sur-Reply upon all counsel record via the Court's ECF system on this 24th day of May 2023.

/s/ Daniel T. Brier

Daniel T. Brier